4 rue de Chevreuse
75006 Paris, France
Tel: +33 (0)1 4720 2415
Website: www.aaro.org
Email: contact@aaro.org

Scoring the Residence-based Taxation for Americans Abroad Act

By David Pinto, Paul Atkinson and Doris Speer[1]

April 22, 2025

Introduction

AARO has long supported the elimination of citizenship-based taxation (CBT) in favor of the universal practice of a residency-based taxation regime (RBT). CBT unfairly burdens American citizens abroad, imposing significant costs on tax preparation and reporting, often where no tax is due, and leading to double taxation.

Many in Congress believe that the elimination of CBT would cost too much money. In the absence of any official "scoring," i.e. estimation of the cost of ending CBT in favor of RBT, we developed a methodology to permit us to "score" it ourselves. We reported in August 2024[2] that ending CBT by eliminating taxation of non-resident Americans' non-U.S. source income would cost much less than many concerned legislators may have guessed.

We revisit the subject because, in December 2024, Representative Darin LaHood (R. IL) introduced the Residence-Based Taxation for Americans Abroad Act (the Bill). Under this Bill non-resident U.S. citizens who "qualify" by meeting the Tax Code's "substantial presence" test could elect to no longer be liable for U.S. tax on non-U.S. source income. It also included some features in addition to the "election" aspect. Notably:

(i) Electing individuals would thereafter be treated by the Tax Code as "non-resident aliens" (NRAs); and

[1] Mr. Heitor David Pinto is an electrical engineer working at a U.S. Government research laboratory near Washington D.C. For many years, Mr. Pinto has researched the subject of citizenship-based taxation extensively, and has written several proposals, essays, comments and analyses, including an essay in 2017 entitled "Constitutionality of Citizenship-Based Taxation," arguing that citizenship-based taxation violates the U.S. Constitution as a form of invidious discrimination.

Paul Atkinson is the Chair of AARO's Banking Committee and Doris Speer is AARO's President.

[2] See August 2024 Scoring Paper. That paper was based on 2021 data and on H.R. 7358, introduced in 2018 during the 115th Congress by former Congressman George Holding (R. NC).

(ii) Electing individuals, whose net worth after excluding some assets would be above a certain threshold, would be deemed "specified" and required to pay a "Departure Tax."

This note provides an overview of recent trends in taxation of overseas Americans and our scoring of the Bill. Although the Bill expired at the end of the 118th Congress, we expect a similar bill to be introduced in the 119th session. We will update this paper if a newly introduced bill would affect our conclusions herein.

As described below, our central estimate of the cost of RBT, by itself, is around $4.5 billion annually. This cost is sensitive to one variable about which we have no information: the U.S.-source share of passive investment income of those who elect. The higher such share, the lower the cost of RBT. Changing the tax status of electing individuals to that of an NRA (which could affect the number of persons electing RBT) does not appear to have a material effect on the scoring. The Departure Tax could make the Bill revenue positive in the first year and then reduce the annual cost on a continuing basis by $1.6 billion to $2.9 billion. The amount of Departure Tax is sensitive to the number of "specified" persons who elect RBT, but a reduction of Departure Tax should have somewhat of an offsetting impact on the loss of tax revenues under the Bill.

Historical Trends in Filings by Overseas Residents

Table 1 summarizes the recent evolution of the main magnitudes involved.

TABLE 1: Historical Trends in Overseas Filers' Income / Taxes Paid*

(USD millions, except "Number of returns filed")

	2018	2019	2020	2021	2022
Number of returns filed	739,140	805,950	777,930	719,690	849,370
Earned income	64,071	70,454	62,925	67,678	80,836
o/w US source	*11,818*	*13,345*	*11,361*	*11,452*	*13,669*
Foreign source	*52,252*	*57,109*	*51,564*	*56,226*	*67,167*
Passive investment income**	14,799	18,128	14,828	26,429	32,405
Other passive income***	4,284	4,387	4,449	4,774	5,923
Total income	83,154	92,969	82,202	98,881	119,164
Total US taxes due	*6,614*	*6,972*	*6 381*	*9,346*	*10,795*

* Data derived from IRS Statistics of Income; US source and foreign source numbers are authors' estimates.

** Net capital gains, taxable interest and dividends.

*** security benefits, assumed throughout to be all US source, and taxable pensions and annuities.

The general picture is one of upward trends in most magnitudes during the recent past. The 2020/2021 data reflect the impact of the Covid pandemic, with its restrictions on

international travel and lower economic growth, but the 2022 data strongly suggest a return to pre-Covid trends.

Returns filed by Americans with overseas addresses rose by around 3.5% per annum with nearly 850,000 filed in 2022. Total income, i.e. combined earned and passive income, reported on these returns rose by around 9.4% per annum to $119.2 billion. This implies a nearly 6% per annum rise in total income per return, well above most measures of inflation for this period.

The rapid rise in total income was driven by increasing passive investment income, which more than doubled between 2018 and 2022 to $32.4 billion. This was mainly generated by the highest income group. The "earned" component of total income, which has risen more slowly, by around 6% per annum, has consistently been in the range of 65-80% of the total (68% in 2022). We estimate that more than 80% of earned income is typically foreign source, leaving slightly under 20% as U.S. source.[3] We have no basis for allocating passive income between U.S. and foreign sources, although some items in "Other passive income" reported in Table 1 (e.g. Social Security benefits), would be mostly or entirely U.S. source.

Total U.S. taxes due from overseas filers on their total income, having risen by 13% per annum from $6.6 billion in 2018 to $10.8 billion in 2022, reflect the rapid growth of passive investment income.

Scoring the Election of RBT Under the Bill[4]

The first column of Table 2 provides an overview of key variables related to taxes owed by overseas filers for 2022, which serves as a CBT baseline. The second column provides an estimate of the same items as they would look if everyone who qualified for RBT elected it, on the basis that taxation of U.S.-source income remains unchanged. The difference between the two estimates reflects the impact of the election of RBT but no other elements of the Bill (which are discussed below).

---

[3] Foreign source earned income is estimated by dividing foreign salaries and wages by total salaries and wages, based on Form 2555 data, and multiplying this quotient by earned income of overseas filers from Form 1040.

[4] ***Methodology:*** Scoring the cost of a change in rules or laws that has a budget impact requires a comparison of (i) the size of key budget items as they would be if no change is made (sometimes called a "baseline"); with (ii) the magnitudes of the same items as they would be in a hypothetical scenario in which the change is implemented (sometimes called a "counterfactual"). For each item of concern the difference in its value in the baseline, "no change" scenario, and in the counterfactual, "with the change" scenario, reflects the budget impact of the policy change being "scored". Estimating the relevant magnitudes required for these calculations can be challenging. Assumptions may be needed about unknown magnitudes.

TABLE 2: US Taxes Due from Individuals Outside the United States, 2022

(USD millions, except "Number of returns filed")

	CBT All are subject to it	RBT Under the Bill* If all who qualify elect
Number of returns filed	849,370	676,033
Total income	119,164	119,164
Taxable income**	89,336	38,438
Income taxes owed before foreign tax credits	22,120	10,107
less Foreign tax credits	12,300	4,188
Income taxes after foreign tax credits	9,819	5,919
plus Other US taxes *less* other credits***	976	361
Total US taxes due	*10,795*	*6,280*
Score: Cost of RBT	...	**4,515**

* Because U.S. source share of passive income is not available, we have assumed nearly 20%, in line with the weighted average of the U.S. source share of earned income across the various income groups.

** After exclusions, deductions, exemptions.

*** Mainly self-employment and net investment income taxes.

Totals may not add due to rounding.

Taxation of Overseas Filers under CBT

The main tax magnitudes shown in the first column, "CBT," reflect the operation of the tax system today. Total income of $119.2 billion is the same figure as reported in Table 1. Significant exclusions, deductions and exemptions reduced the taxable portion of this income to $89.3 billion. This would have implied $22.1 billion in income taxes payable in 2022 before any allowance for foreign tax credits. But such credits reduced U.S. taxes due by more than half, to $9.8 billion. "Other US taxes *less* other credits" accounted for a further $976 million, yielding the $10.8 billion total for "*Total US taxes due*."

The Effect of the Election of RBT

The Bill would modify the CBT regime by making RBT elective for "qualifying" individuals. The main qualifying condition for electing RBT is that one not be a resident of the United States under the "substantial presence" test of the Tax Code.[5] Based on the available data we estimate that this this implies, on average, at least 8 months outside the United States per year over a three-year period. This works to reduce the number of qualifiers by around 20% to 676,000 tax returns.

In this scoring, we confine ourselves to measuring the direct impact of the change (sometimes known as a "static" estimate) without speculating about possible behavioral

[5] IRC Section 7701(b)(2)(C)(i).

reactions to the change in regime. Since removing non-U.S.-source income from the U.S. tax net for electing qualifying individuals is generally in U.S. overseas taxpayers' interest, we assume here that 100% of the persons who qualify for RBT will elect.

The impact on key tax variables of incorporating the shift of qualified persons from CBT to RBT is reported in the second column of Table 2. All tax items are substantially smaller than under CBT with the result that "*Total US taxes due*" decline to $6.3 billion, implying a budgetary cost of $4.5 billion. To the degree that other features of the Bill lead qualifiers not to elect, tax revenues should be higher and the cost of allowing election to RBT smaller.

Sensitivity to the Share of Passive Investment Income that is U.S. Source

One variable which influences the prospective cost of RBT is the share of non-residents' investment income that is U.S. source and would continue to be taxed as at present. As noted above, a weighted average of nearly 20% of non-resident filers' earned income is U.S. source and we have assumed that U.S. tax would remain due on this. This percentage varies considerably from one income group to another: From nearly 0% for low incomes rising to 28% for incomes above $1 million.

But our scoring is also sensitive to how non-residents' passive investment income is divided between U.S. and non-U.S. source. Other passive income items, such as Social Security benefits, are clearly U.S. source, so we assume that they would also continue to generate U.S. taxes. Unfortunately, however, we know little about the source of much of non-resident filers' passive investment income, i.e. from real estate, small businesses and financial portfolios. We therefore consider a range of possibilities. The scenario "RBT under the Bill" provided in Table 2 is one of these, based on the assumption that the share of U.S. source passive investment income is the same as the share of U.S. source earned income (i.e., nearly 20%).

TABLE 3: Sensitivity Analysis of U.S. Share of Passive Investment Income

(USD millions)

		RBT Under the Bill (If all who qualify elect)		
US source share of passive investment income	0%	20%*	50%	100%
Total income	119,164	119,164	119,164	119,164
Taxable income**	33,736	38,438	43,117	47,824
Income taxes owed before foreign tax credits	8,799	10,107	11,388	12,602
less Foreign tax credits	4,188	4,188	4,188	4,188
Income taxes after foreign tax credits	4,611	5,919	7,200	8,414
plus Other US taxes *less* other credits***	212	361	506	636
Total US taxes due	*4,823*	*6,280*	*7,706*	*9,050*
Score: Cost of RBT	**5,972**	**4,515**	**3,089**	**1,745**

* This column is from Table 2, used in our scoring of the cost of RBT.

** After exclusions, deductions, exemptions.

*** Mainly self-employment and net investment income taxes.

Totals may not add due to rounding.

In Table 3 we report three variations of the scenario as well as repeating the scenario reported in Table 2 (in the box) for comparison. "*Total U.S. taxes due*" increase, and the cost of RBT falls, as the share of passive investment income that is U.S.-source rises. The range within which true values must fall are defined by scenarios using the extreme possibilities for the U.S. share of this income, i.e., 0% and 100%. At a zero U.S. share of passive investment income the cost of RBT would be close to $6 billion. At a maximum U.S. share of 100%, the cost of RBT would be only $1.7 billion. At the 50% midpoint, the cost of RBT would be $3.1 billion.

It is worth noting is that our working assumption that the share of passive investment income that is U.S.-source, at less than 20%, is quite low. This implies that the great bulk of this passive investment income that is currently being taxed by the U.S. would cease to be taxed under RBT because it is foreign-source. To the degree that the U.S.-source share is in fact higher than we have assumed here, less foreign source passive investment income now being taxed under CBT would be lost by a shift to RBT. This skews the risk of error introduced by any mis-judgement toward *overstatement* of the cost of RBT.

Scoring Other Features of the Bill

Change in Tax Status of Electing Individuals to NRA

Changing the tax status of non-resident Americans to NRA for tax purposes would affect the amount of taxation of most types of income for most electing individuals. A comparison

of taxation under CBT and as it would operate for non-resident Americans electing RBT with resulting taxation as NRAs can be found here.

These various elements would affect some taxpayers favorably and others unfavorably. As such they would influence the number of persons who would elect RBT as well as whether and by how much the Bill's cost would be affected. As people are unlikely to elect against their interest many, if not most, people who qualify for RBT would not elect it if they expect the result to be higher taxes. So, some people who qualify for RBT will not elect, in which case they will not add to the budgetary cost of RBT. We cannot quantify this number nor the amount of money that might be involved but we make the following observations:

As regards earned income, the regimes under CBT and RBT are fairly similar; the change in electors' tax status to NRA may have a minimal effect on the cost of RBT. Notably,

- Overseas Americans who earn less than the Foreign Earned Income Exclusion limit ($130k for 2025) pay no U.S. income tax on this income now so, whether they elect or not, the cost of RBT would not be affected. 680,040 (80%) of the tax returns filed in 2022 indicated an Adjusted Gross Income (AGI) of less than $100,000.
- NRAs would lose the standard deduction. This may lead those who have little to itemize not to elect RBT; if they do not, their tax payments included in "*Total U.S. taxes due*" in the first column of Table 2 would continue to be paid and, so, would not add to the cost of RBT.

The impact on taxation of passive income is uncertain, although it could be limited.

- NRAs' income from pension payments and Social Security benefits would be taxed at a flat 30% (reduced in some countries by tax treaties). This may lead many to not elect. The higher tax payments by those who do elect would reduce the cost of RBT.
- For NRAs in certain countries, some items, including dividends, annuities and royalties, would also face a relatively high withholding tax of 30%, which would generate additional tax revenues if these persons elect RBT, thereby reducing its cost.
- NRAs' interest income and gains on securities are not subject to U.S. tax at all (with certain limited exceptions), which may lead many to elect RBT. In some countries taxpayers now get a U.S. tax credit (per tax treaties), for having paid taxes on such income in their resident country. They would lose these credits, so to that degree there would be no U.S. tax revenue loss.
- Disposition of U.S. real property would have no effect on the scoring. Although NRAs are withheld at a high rate on such sales under the Foreign Investment in Real

Property Tax Act, the tax rate for NRAs who file returns is the same as for U.S. citizens under CBT.

We can say little about the circumstances of those who do elect but it is clear that increases in tax revenues resulting from NRA taxation of those who elect would offset tax reductions for others, mitigating tax losses. While it is difficult to say much about the balance, it seems clear that, overall, much would net out. In fact, after modelling this, our best guess is that the transition to NRA taxation would slightly *offset* the cost of the shift to RBT by around $50 million ($4.515 billion down to $4.466 billion, i.e. unchanged when rounded to the nearest $100 million).

The Departure Tax

Finally, the Bill envisages that electing individuals whose net worth and its composition meet certain criteria will be designated as "specified" and subject to a Departure Tax based on "deferred income." In practice, given the exclusions provided in the Bill from the calculation of the net worth threshold,[6] this would mainly be a tax on unrealized gains on securities and small businesses. Such a tax would prevent wealthy individuals from escaping taxation on their gains altogether by moving overseas. It is also expected to offset much of the revenue loss arising from the introduction of RBT, making it a key element of any scoring of the Bill.

The Bill aligns the Departure Tax threshold with the exclusion amount currently applying to estate tax, around $14 million.[7] A threshold this high would allow the great majority of qualifying individuals to elect RBT without being subject to the Departure Tax. "Specified" individuals whose wealth would make them subject to the Departure Tax would be taxed at capital gains rates on unrealized gains. These rates are progressive, rising to a maximum of 23.8%.

An important feature of the Bill is that the existing non-resident American population which is non-resident under the "substantial presence" test for at least 3 of the 5 years preceding introduction of the Bill would be exempted from the Departure Tax (i.e., "grandfathered").[8] But taxpayers qualifying for RBT who have not met this requirement will not be exempted. A consequence for our scoring is that Departure Tax revenues would consist of one-time payments by taxpayers who have not satisfied this "grandfathering" requirement but who have elected RBT. This would be followed by (smaller) continuing annual flows paid by newly expatriating Americans.

[6] See Section 899 A. (d) (1)-(4) in the Bill.
[7] Under current law this will drop to around $7 million at the end of 2025, although discussions are ongoing in Congress to enact legislation to maintain this threshold.
[8] Section 899 A. (g) (1)-(3).

Estimating what future revenues the Departure Tax might generate is clearly very speculative. Information and/or assumptions are required about (i) the scale of unrealized gains held by "specified" individuals qualifying for RBT which would be subject to the Departure Tax; and (ii) the likelihood of qualifying individuals choosing to elect RBT and paying the Departure Tax. Nevertheless, we have some useful data from the IRS which allow us to provide some indicative numbers based on calculations which we have summarized in Table 4.

TABLE 4: THE DEPARTURE TAX AND COST OF THE BILL

(USD millions, except "Multiplier" column)

	Multiplier	*Capital Gains*	*Year 1*	*Following Years*
Realized capital gains of taxpayers with incomes >1 million*		19,300		
Unrealized capital gains**	12	231,600		
of specified taxpayers who qualify for RBT***	72%	166,752		
of whom have gains subject to Departure Tax****	85%	141,739		
Unrealized capital gains of wealthy, qualified electors		**141,739**		
o/w electors not "grandfathered," i.e., subject to Departure Tax	9.6%	13,607	13,607	---
o/w electors moving abroad each year, i.e., subject to Departure Tax*****	4.8%	6,803	6,803	6,803
Total of capital gains subject to Departure Tax			20,410	6,803
Departure Tax, assuming capital gains rate of 23.8%			**4,858**	**1,619**
o/w electors not "grandfathered"			3,238	---
o/w electors moving abroad each year			1,619	1,619
Memo Items:				
Cost of RBT			***4,515***	***4,515***
Cost of the Bill *(Cost of RBT minus Deparature Tax)*			***-343***	***2,896***

* IRS 2022 data indicate that few persons with income <$1 million would have net assets >$14 million threshold.

** IRS Data shows average holding time for assets is 13 years.

*** Based on 2022 Form 2555 data of taxpayers using FEIE.

**** 15% of their capital gains derive from businesses and real estate in the U.S., which would not be subject to Departure Tax or would be a credit against future capital gains tax.

***** IRS 2022 data.

The starting point is evidence from the IRS that very few people with incomes less than $1 million have net assets above the $14 million threshold for being "specified."[9] So, we confine ourselves to overseas filers with incomes > $1 million. Based on 2022 data, the latest year available, these filers realized capital gains amounting to $ 19.3 billion, as shown in Table 4.

The IRS reports that the average holding time for assets is 13 years, which would suggest that overseas filers hold unrealized gains of $231.6 billion. After filtering out taxpayers who do not qualify for RBT because they fail to be non-residents under the "substantial

[9] See here.

presence" test and correcting for some double counting of gains already reflected in the cost of RBT reported in Table 1, we obtain $141.7 billion as unrealized gains potentially subject to the Departure Tax. Allowing for the transitional measures which exempt many long-term overseas filers from the Departure Tax who are "grandfathered," and applying the full capital gains tax rate of 23.8%, we obtain an estimated $4.9 billion revenue in the first year, consisting of a one-time payment of $3.2 billion by short-term overseas filers who cannot meet the" grandfathering" test and a continuing annual revenue of $1.6 billion from everyone else.

Revenues of this magnitude would cover the cost of the election of RBT and make the Bill revenue-positive in the first year of implementation (when the elections would take place). They would subsequently reduce the annual cost of the change from the $4.5 billion reported in Table 2 to $2.9 billion.

It should be noted that this estimate is based on the assumption that all who qualify for RBT elect it, including all those who would be subject to the Departure Tax. Since RBT would be elective and individual situations are highly varied, there must be a possibility that some people who qualify for RBT would elect to remain with CBT and avoid the Departure Tax. This would make the one-off transitional $3.2 billion and the annual flows of $1.6 billion upper bounds rather than central estimates for the Departure Tax. Conversely, to the degree that qualifying "specified" individuals remain with the current CBT regime they would lose the advantages of RBT, mitigating the cost of the change to the Treasury.

In the extreme, if no "specified" individuals elect RBT due to the Departure Tax, revenues from it would be zero. In this event those "specified" individuals would also lose the benefits of RBT amounting to $2.871 billion per annum, reducing the projected continuing cost of the Bill to around $1.644 billion. These calculations suggest that the budgetary impact of the Bill is quite sensitive to whether and how many high income people elect RBT as opposed to remaining in the CBT regime.

Conclusion

The Bill would make three major changes to taxation as it affects Americans resident overseas, who are currently subject to CBT as well as to the local tax regime of their resident country:

- It would offer "qualifying" individuals the option of electing to no longer be taxed in the United States on non-US-source income;
- Qualifying individuals who elect this option would be taxed as NRAs;

- Electing individuals having a net worth above a certain threshold, after certain exclusions, would be deemed to be "specified" and subject to a Departure Tax.

The budgetary impact of the Bill is sensitive to many variables, including: the share of overseas filers' passive income that is U.S. source; how many persons would actually elect RBT and how many of those would be "specified;" and, finally, how much in unrealized gains do "specified" individuals hold and how much Departure Tax would be paid on those gains.

On the basis that the share of non-resident filers' passive investment income that is U.S.-source is in line with the share of earned income that is U.S.-source (i.e. nearly 20%),[10] and that all those who qualify for RBT elect it, we estimate that the cost of the election of RBT to be around $4.5 billion annually.

Changing the status of electing individuals to NRA potentially affects a number of tax items in offsetting ways and does not appear to have a material effect on the scoring. In the event that all qualifying "specified" individuals elect RBT, revenues from the Departure Tax could run as high as $1.6 billion annually, which could reduce the continuing net annual cost of the Bill to $2.9 billion. In addition, failure to satisfy the "grandfathering" test could generate one-time Departure Tax payments of up to $3.2 billion. While all Departure Tax estimates are sensitive to the number of "specified" persons who elect RBT, any decision not to elect RBT, and to avoid the Departure Tax, has an offsetting impact on the loss of tax revenues due to RBT.

[10] We have no information about the share of overseas Americans' passive investment income is U.S.-source but, to the extent that it exceeds 20%, we expect tax revenues would be higher and the cost of RBT would be reduced.